

BCTGM FACT SHEET



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THE AMERICANS WITH DISABILITIES ACT

Workers with disabilities often are able to continue doing useful work if given the chance. That's why the Americans With Disabilities Act (ADA) protects individuals with disabilities from discrimination in employment, public services, public and private transportation, public accommodations, and telecommunications services.

The ADA is another tool BCTGM members and local unions can use to combat discrimination.

Who must comply?

- ▲ Private employers with 15 or more employees
- ▲ State and local governments with 15 or more employees
- ▲ Employment agencies
- ▲ Labor unions

Who is protected?

The ADA covers individuals with permanent disabilities, meaning those who..

- ▲ Have a physical or a mental impairment that limits one or more of their major life activities. The impairment can be apparent, like blindness, or hidden, like HIV/AIDS.
- ▲ Have a history of such an impairment. For example, a person who is a cancer survivor has a record of a physical impairment.
- ▲ Are regarded as having such an impairment. For example, a person with a hearing aid or severe burns might face discrimination even though they still can perform their job.
- ▲ Have a known association or relationship with a disabled person, such as the parent of a disabled child.
- ▲ Are recovering alcohol or drug abusers. It is illegal to discriminate against recovering alcoholics or drug addicts for past addictions.

What does the ADA prohibit?

The ADA prohibits employers from discriminating against qualified individuals with disabilities who can perform the essential functions of the job.

The ADA protects disabled individuals from discrimination in virtually all terms, conditions, and privileges of employment, including:

- ▲ Job application procedures
- ▲ Hiring, firing, and disciplinary actions
- ▲ Work assignments
- ▲ Promotion or advancement
- ▲ Compensation and fringe benefits
- ▲ Layoffs
- ▲ Job training

The ADA requires employers to provide reasonable accommodation for employees with disabilities. It does not require employers to create a job for an employee with a disability or maintain a quota of a certain percentage of employees with disabilities.

Employers must provide reasonable accommodation unless they can demonstrate that the accommodation would impose an undue hardship on the business' operation.

What is a major life activity?

Major life activities include walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, and working. The ADA protects workers with a disability that limits at least one major life activity from discrimination.

What is reasonable accommodation?

This is the reasonable amount of expense, effort, or restructuring that an employer must undertake

to enable a qualified individual with a disability to perform the essential functions of a job. Reasonable accommodation may include changes in work environment or changes in the way a job customarily is performed.

Employers can't...

- ▲ Use tests or other methods to screen out disabled persons.
- ▲ Ask an applicant about his or her disability, unless the questions relate to specific job functions.
- ▲ Ask about personal health history, past illnesses, hospitalization, days absent from work due to illness, or current use of prescription medication.
- ▲ Ask if a potential employee has ever filed a workers' compensation claim.
- ▲ Require an applicant to take a medical examination before a job offer is made. (A medical exam may be required after a job is offered).

What are the essential functions of a job?

The essential functions of a job are the basic duties of the employment position. To determine if a job function is essential, consider:

- ▲ Reason the position exists
- ▲ Degree of expertise or skills required to perform that function
- ▲ Amount of time spent on performing the function
- ▲ Consequences of not performing the function
- ▲ Written job description prepared before advertising or interviewing applicants for the job.

What is undue hardship?

Employers are not required to make an accommodation that would be unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the business. Important factors to consider include:

- ▲ Nature and cost of the accommodation
- ▲ Overall financial resources of the entity
- ▲ Number of persons employed at the facility or by the company as a whole

- ▲ Impact of the accommodation on the operation of the facility or the company as a whole
- ▲ Number, type, and location of the company's facilities
- ▲ Composition, structure, and functions of the workforce

If a particular accommodation constitutes an undue hardship, there may be other accommodations that will not constitute such a hardship.

An employer may not claim undue hardship solely because hiring a qualified individual with a disability would increase health care costs.

How are health insurance policies affected?

Employees with disabilities must be accorded equal access to whatever health insurance coverage the employer provides to other employees. However, employers may continue to offer policies that limit or exclude payment for pre-existing conditions, even if such policies adversely affect individuals with disabilities.

An employer that provides health insurance benefits to its employees for their dependents may not reduce the level of those benefits to an employee simply because that employee has a dependent with a disability.

The ADA's Public Accommodation Requirements

The ADA requires all public facilities - including union halls - to be accessible to persons with disabilities, through elevators, designated parking spaces, and other accommodations.

To accomplish this, architectural and communication barriers in existing facilities must be removed if it is "readily achievable," taking into account the necessary changes, the size and cost of the project, and the organization's size and financial resources.

Meetings and conferences must be planned with the needs of the disabled in mind. They should be offered the same services as non-disabled participants, including transportation, lodging and food.

Large print, braille, or cassette recordings of materials may be required for vision-impaired individuals.

For hearing impaired participants, sign language interpreters should be provided and any videos should be captioned.

How can BCTGM members combat ADA discrimination?

- ▲ Keep a written record of all incidents regarding discriminatory behavior, including what was said, time, place, and witnesses, if any.
- ▲ Check with others in the workplace who also might be victims. Contact your local union for assistance, including help in filing a grievance. Keep in mind that the time limits under your contract's grievance procedure apply.
- ▲ File a complaint with the Equal Employment Opportunity Commission (EEOC). (There are time limits of 180-300 days for filing a complaint).

- ▲ File a discrimination charge with the EEOC (for employment violations) or the Office of the U.S. Attorney General (for public accommodation and public service violations).

Some of the remedies victims of ADA discrimination have won are: reinstatement, hiring, reassignment, promotion, training, seniority rights, backpay, punitive/compensatory damages.

Where can we get advice on compliance with the ADA?

For more information about the Americans With Disabilities Act, contact Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Research and Education Department, at (301) 933-8600.

